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### FINAL DECISION OF THE COUNTY COUNCIL/BOARD OF APPEALS

**RE: Zoning Appeal Case No. 5152**

**APPLICANT: David Lawrence**

**LOCATION: 5102 Norrisville Road, White Hall**

**REQUEST: Special Exception to locate construction services  
and commercial equipment in the AG District**

**WHEREAS, the County Council/Board of Appeals has reviewed the file and brief in this matter; and**

**WHEREAS, the County Council/Board of Appeals has reviewed the record developed by the Hearing Examiner and has considered the recommendation of the Hearing Examiner; and**

**WHEREAS, the County Council/Board of Appeals has heard all final arguments based on the evidence of the record.**

### BACKGROUND

The Applicant, David B. Lawrence, requests a Special Exception pursuant to Section 267-53D(1) and 267-53H(1) of the Harford County Code, to allow the storage of commercial equipment and construction services in an AG/Agricultural zone.

The subject parcel is located at 5102 Norrisville Road - Lands of Elsa Small, and is more particularly identified on Tax Map 8, Grid 4B, Parcel 70, Lot 4. The parcel consists of 5.2 acres, more or less, is zoned AG/Agricultural and is entirely within the Fourth Election District.

Mr. Lawrence's request was advertised pursuant the Zoning Board of Appeals rules of procedure in the Aegis newspaper on June 13, 2001 and June 20, 2001 and in the Record newspaper on June 15, 2001 and June 22, 2001. A hearing was held before the Zoning Hearing Examiner on August 8, 2001. William F. Casey, Zoning Hearing Examiner, subsequently, on September 10, 2001 issued his decision. According to the Zoning Rules of Procedure, the Zoning Hearing Examiner's recommended decision automatically becomes that of the Board of Appeals unless a final hearing is requested by either party to the matter. A final argument was requested on October 5, 2001.

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Attorney's for both the Applicant and the Opponents appeared before the Zoning Board of Appeals on February 19, 2002 at which they presented their final argument concerning David Lawrence's requested Special Exception.

**HEARING BEFORE THE ZONING HEARING EXAMINER**

Mr. David B. Lawrence appeared and testified that he is the Applicant in this matter and is the owner of the subject parcel. Mr. Lawrence testified that he owns and operates a business primarily engaged in marine and shoreline work but secondarily involved in State Highway work, particularly salt and snow removal during the winter months for Interstate 83. The witness testified that he also does hauling and quarry work. The Applicant described the parcel as 5.2 acres in size, with a long triangular shape accessed via a lane that serves panhandle lots on the parcel. Access to the lane is from MD Route 23, Norrisville Road. According to the witness, the parcel is bordered on one side by the BG&E power line right-of-way and on the other by a heavily forested area. The Applicant has a home, a shed and a barn on the parcel, as well as a 1,000 gallon diesel fuel tank. He intends to store a track loader, backhoe, bulldozer and seven dump trucks within a 30 foot by 40 foot metal pole building that he intends to construct on the property.

The witness testified that, in his opinion, none of this equipment is visible from other properties now because of the mature forested area and power line right of way but that he intends to construct the building anyway which will assure protection of his equipment as well as completely screen from view all of the equipment stored on site. The only deliveries to the parcel are fuel from Corbin Fuel Company. Dump trucks are normally stored at a lot in Bel Air but are fueled, washed and also temporarily stored at the subject site. His access is to Norrisville Road and the witness testified that concerning whether there is adequate site distance for ingress and egress of vehicles to the subject parcel that he has never had a problem with it but it deserves some caution. The Applicant stated further that drivers arrive at the property to drop off paper work or obtain fuel but trucks are often off site for extended periods of time depending on the nature and location of the projects. The Applicant further stated that if required he would change grading or remove vegetation to improve the site at the entrance to Norrisville Road if he could obtain the permission of the owner of lot 2. The witness stated that he does not need to use BG&E right-of-way for any purpose and would recut the driveway if necessary.

Mr. Hugo Vandewille testified that he lives directly to the right of the Applicant and is an adjoining property owner. The witness stated that he has no objection to the use and that neither he nor anybody else can see the truck storage area. He testified that he did not have any objection to the Applicant to grade or make other entrance changes to further improve site distance or upgrade to a commercial entrance although he had not been able to examine what improvements were contemplated.

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Next to testify was Stacey Clark-Tranter, another adjoining property owner. The witness stated that she has no objection to the proposed use and that she would be the party most impacted by any adverse effects because she lives closer than any other neighbor. This witness stated that the trucks are no loud or obtrusive and that the storage of these vehicles has not had any adverse impact on her, her family or her property.

Mr. Anthony McClune appeared and testified on behalf of the Department of Planning and Zoning. Mr. McClune described the subject parcel as a densely wooded panhandle lot with gently rolling topography. The parcel borders the BG&E power line right-of-way and access is by a gravel lane that runs from Norrisville Road approximately two-tenths of a mile and serves two other panhandle lots.

Mr. McClune stated that the Applicant's request satisfies all of the statutory requirements of both Code Section 267-53D(1) and 267-53H(1) in that the surrounding area is zoned AG, the equipment is entirely screened from view by dense forest, distance and a proposed building enclosure and the parcel size exceeds the 2 acre minimum requirement. Mr. McClune next described the proposed use in light of the "Limitations, Guides and Standards" of Section 267-9I and concluded that this use, at this location, had no greater or unusual impacts than this use at any other location within the AG zone. Mr. McClune specifically referenced traffic concerns by testifying that access to the site is off a state collector road and further noted that the road itself carries lots of truck traffic on it so a few additional trucks was nothing that would even be noticeable. On cross-examination Mr. McClune was not aware that the Board of Education Transportation Department would not let school buses enter Route 23 from Urey Road which is directly across from the subject parcel. Mr. McClune further acknowledge that he was not a transportation engineer nor, upon his visit to the subject parcel, did he personally witness any trucks either coming or going from the driveway. Mr. McClune stated that the Department of Planning and Zoning recommends approval of the proposed use.

In opposition appeared William E. Webb who lives at 5072 Norrisville Road. Mr. Webb testified that he was the former Chief Crew Supervisor for the Department of Public Works of Prince George's County. Mr. Webb also hold a commercial driver's license. Mr. Webb objected to what he considered to be a commercial operation. Mr. Webb also testified that he was very concerned about the trucks entering and leaving Route 23 because there is "very little site distance". He further testified that there have been numerous accidents involved in that S turn (referring to the S turn immediately adjacent to the Applicant's property). He also testified that a dump truck which intends to go south upon leaving the Applicant's property cannot make a radius turn without crossing the center line into oncoming traffic. He further testified that if the truck would be turning north from the Applicant's property, then vehicles coming south cannot see him when they are coming out of the S turn until they are right on top of the truck. He concluded that he did not see how it could be safe to come out right at the end of a blind turn and noted that they do not allow school buses to come out at that location (onto Route 23).

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Next in opposition appeared Richard Brooks who resides at 5142 Meadowview Road, approximately 1/2 mile away from the subject parcel. The witness stated that he lives in a 72 home subdivision and that he considers the Applicant's proposed use a commercial intrusion into the agricultural integrity of the area. The witness testified that his primary concern is the safety issue on this particular stretch of Route 23. He noted that it is well-known for vehicular crashes. It was Mr. Brooks' position that the adding of a heavy equipment access and egress, not the mere fact that additional heavy equipment would actually travel on Route 23, would create additional hazards on the road at that location. The witness also said he can hear the sound of truck tailgates at all hours.

Next in opposition appeared Mr. Charles Watkins who lives at 5136 Meadowstream Garth, which is approximately 1/2 mile away from the subject parcel. Mr. Watkins expressed his concern regarding traffic issues, stating that he has children attending Norrisville Elementary School and that school buses are not allowed by the Board of Education Transportation Department to make the turn onto Urey Road, the road located just below the lane exiting the Applicant's property. He also noted that the Applicant's property is at the end of a long S curve and there have been numerous crashes in that area of Route 23. Moreover, he opined that Applicant's entrance to Norrisville Road could not be made safe enough for traffic that travels the road at that location short of straightening out the S curve.

Mr. Stuart Broadwater appeared in opposition, stating that he is President of the Meadowstream Homeowner's Association and lives at 5107 Meadowview Drive. Mr. Broadwater testified that school buses have not been allowed for the last six years to enter Route 23 off of Urey Road either north or south because of safety concerns. He also testified that Urey Road is directly across from the entrance to Applicant's property. Mr. Broadwater further testified that the proposed use would impact upon the quiet rural atmosphere in that location. Finally, Mr. Broadwater testified that no environmental impact study had been performed regarding the proposal, particularly noting the storage of diesel fuel on the property as a potential problem. Mr. Broadwater further stated that he had to quickly get out of the way of a dump truck entering Norrisville Road from Applicant's property.

Mr. William McCartin appeared in opposition and stated that his property abuts the subject parcel as well as the other panhandle lots. His property is a 93 acres parcel in active farming activity. His concerns include the use of the Applicant's equipment to service remote uses not connected to the community. The witness stated that noise from the use of the trucks has continually gotten greater and has become very obtrusive over the last two years. At times the truck noise has awakened him from sleep. In Mr. McCartin's opinion, however, the most important objection was the safety issue and again he noted the proximity of the S curve to Applicant's property and the fact that there is very little site distance. He believes that approval of the requested Special Exception was a real safety issue because of the dangerous location.

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Last to testify in opposition was Mr. Edward Leimbach who lives at 5079 Norrisville Road. Like other opponents, Mr. Leimbach testified that he is concerned about the safety issues related to large dump truck traffic entering and leaving a curved area of Norrisville Road. The witness admitted that he really cannot hear the trucks and did not feel noise was a factor for him but did think that the Applicant's trucking business represented a business expansion in a rural/agricultural part of the county. He feared further business use intruding into what he believes should remain agricultural and residential use areas.

**RELEVANT LAW**

The provisions of the Harford County Code applicable to this parcel and this application for Special Exception are:

**Section 267-51**

**"Purpose.**

Special exceptions may be permitted when determined to be compatible with the uses permitted as of right in the appropriate district by this Part 1. Special exceptions are subject to the regulations of this Article and other applicable provisions of this Part 1.

**Section 267-52**

**"General regulations.**

- A. Special exceptions require the approval of the Board in accordance with Section 267-9, Board of Appeals. The Board may impose such conditions, limitations and restrictions as necessary to preserve harmony with adjacent uses, the purposes of this Part 1 and the public health, safety and welfare.**
- B. A special exception grant or approval shall be limited to the final site plan approved by the Board. Any substantial modification to the approved site plan shall require further Board approval.**
- C. Extension of any use or activity permitted as a special exception shall require further Board approval.**
- D. The Board may require a bond, irrevocable letter of credit or other appropriate guaranty as may be deemed necessary to assure satisfactory performance with regard to all or some of the conditions.**

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- E. In the event that the development or use is not commenced within three (3) years from date of final decision after all appeals have been exhausted, the approval for the special exception shall be void. In the event of delays, unforeseen at the time of application and approval, the Zoning Administrator shall have the authority to extend the approval for an additional twelve (12) months or any portion thereof."**

**Section 267-53D(1)**

**"Motor vehicle and related services.**

- (1) Commercial vehicle and equipment storage and farm vehicle and equipment sales and service. These uses may be granted in the AG District, and commercial vehicle and equipment storage may be granted in the VB District, provided that:**
- (a) The vehicles and equipment are stored entirely within an enclosed building or are fully screened from view of adjacent residential lots and public roads.**
  - (b) The sales and service of construction and industrial equipment may be permitted as an accessory use incidental to the sales and service of farm vehicles and equipment.**
  - (c) A minimum parcel area of two (2) acres shall be provided."**

**Section 267-53H(1)**

**"Services.**

- (1) Construction services and suppliers. These uses may be granted in the AG and VB Districts, provided that a buffer yard ten feet wide shall be provided around all outside storage and parking areas when adjacent to a residential lot or visible from a public road."**

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Additionally, the Zoning Board of Appeals is also guided by Code Section 267-91 entitled "Limitations, Guides and Standards":

"In addition to the specific standards, guidelines and criteria described in this Part 1 and other relevant considerations, the Board shall be guided by the following general considerations. Notwithstanding any of the provisions of this Part 1, the Board shall not approve an application if it finds that the proposed building, addition, extension of building or use, use or change of use would adversely affect the public health, safety and general welfare or would result in dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood. The Board may impose conditions or limitations on any approval, including the posting of performance guaranties, with regard to any of the following:

- (1) The number of persons living or working in the immediate area.
- (2) Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic; and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.
- (3) The orderly growth of the neighborhood and community and the fiscal impact on the county.
- (4) The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.
- (5) Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.
- (6) The degree to which the development is consistent with generally accepted engineering and planning principles and practices.
- (7) The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.
- (8) The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.
- (9) The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.
- (10) The preservation of cultural and historic landmarks."

## CONCLUSION

A special exception use involves a use which is permitted, once certain statutory criteria have been satisfied. A special exception use has also been occasionally termed a "conditional use". It is a desirable use, which is attended with detrimental effects which require that certain conditions be met, and once met, it is a permitted use because the legislative body has made that policy decision. Mossburg v. Montgomery County, 107 Md. App. 1, 666 A 2d. 1253 (1995).

The Applicant's request constitutes a proposed use special exception use in an AG zone. Initially, the Board of Appeals notes that the Applicant has established that his proposed use meets all the threshold statutory criteria required by the Harford County Zoning Code. The surrounding area is zoned Agricultural, the parcel exceeds 2 acres in size and is itself zoned Agricultural. The trucks and commercial equipment are proposed to be entirely screened from view of adjacent residential uses, and there are no proposed signs.

Having met the statutory burden of proof, the Protestants then bear the burden of showing that this special exception use at this particular location has impacts different or unique than this same use at some other location within the Agricultural zone and that these different impacts are so materially adverse to adjoining or neighboring property owners that the proposed use should be denied.

The standard to be applied in reviewing a request for special exception use was set forth by the Maryland Court of Appeals in Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981) wherein the Court said:

"...The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible *absent any facts or circumstances negating the presumption*. The duties given the Board are to judge whether the *neighboring properties in the general neighborhood would be adversely affected* and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

Whereas, the Applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of



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harm or disturbance or the question of disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal. (Citations omitted). These standards dictate that if a requested special exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied.” (Emphasis in original).

The Court went on to establish the following guidelines with respect to the nature and degree of adverse effect which would justify denial of the special exception:

“Thus, these cases establish that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” 291 Md. At 15, 432 A.2d at 1327.

The Applicant’s requested use involves the storage and use of large commercial dump trucks. It is clear that this use has inherently associated with it some noise and the need for ingress and egress to County Roads no matter where in an AG district such a request would be located. Notwithstanding, the protestants have demonstrated that the Applicant’s use at this particular location has adverse effects above and beyond those normally associated with this type of use regardless of its location in the AG zone.

Specifically, the Board of Appeals references the testimony of all the opponents concerning the subject property’s location at the end of an S turn. A further review of the exhibits indicates the impacts associated with the ingress and egress of the dump trucks would be less at other locations in a similarly zoned AG district than at the subject parcels location.

It is also fundamental that the Board of Appeals is guided by guides and standards contained in Code Section 267-9l and particularly notes that the Board shall not approve an application if it finds that the proposed use would result in dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood. The current problems associated with the S turn in question would be exacerbated by allowing this special exception use at this location and thereby allowing the ingress and egress of dump trucks to the road at the end of a blind turn.

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The Board of Appeals is aware that there are numerous locations within AG zoned districts where ingress and egress would be made onto a straightaway section of road, thereby eliminating the extreme dangerous traffic conditions which would be associated with approval of a request of this type at this specific location.

In reaching this conclusion, the Board of Appeals is not unmindful that the Zoning Hearing Examiner opined that problems could be "adequately addressed" by improvements to the entrance and upgrade to the commercial point of ingress and egress. The record is void of any reference where any such improvements would be located. Moreover, the record is absent any reference of how the S turn would be "straightened out" and thereby eliminated by the upgrade to a commercial point of ingress/egress. In addition, the Board is also not unmindful of the testimony of Anthony McClune of the Department of Planning and Zoning.

Upon its independent review of the entire record, the Board has reached the conclusion that, in this matter, the Protestants knowledge and experience with this area and the S turn far exceeds that of Mr. McClune. Moreover, an examination of Mr. McClune's testimony regarding traffic impacts, reveals that it only focused upon the additional amount of traffic on Norrisville Road which would be associated with the proposed use rather than the dangerous traffic conditions associated with the ingress and egress of that additional traffic.

Accordingly, the Zoning Board of Appeals concludes as follows:

BE IT RESOLVED that the Harford County Council/Board of Appeals by affirmative vote of 6-0, denies the requested special exception, based upon the findings of fact and conclusions of law set forth in this decision and contained in the record of this case.

COUNTY COUNCIL OF HARFORD COUNTY



Gunther D. Hirsch  
President of the Council

March 5, 2002

Final decision of the County Council/Board of Appeals may be appealed with the required fees to the Circuit Court for Harford County on or before **APRIL 5, 2002**. Filing instructions may be obtained from the Clerk of the Circuit Court.